



VOPA ADVISOR

VOLUME 2

SUMMER 2003

EDITION 8



MISSION OF VOPA

Through zealous and effective advocacy and legal representation to:

- ◇ *Protect and advance the legal, human, and civil rights of persons with disabilities;*
- ◇ *Combat and prevent abuse, neglect and discrimination;*
- ◇ *Promote independence, choice and self determination by persons with disabilities in the Commonwealth.*

MESSAGE FROM THE EXECUTIVE DIRECTOR

Colleen Miller, Esq.

I wanted to take this chance to introduce myself to everyone as VOPA's new Executive Director.

I am very excited about the opportunity the Governing Board has given me to continue to shape Virginia's protection and advocacy system as well as bring new ideas and innovations to the table.

I am quite impressed with VOPA's current staff and their dedication to the agency's work and clients. I look forward to amplifying the agency's staff resources to provide in-

creased services to the Commonwealth's citizens with disabilities.

I previously served as the Legal Director for New Mexico's Protection and Advocacy system. I served as a lead attorney on complex litigation and provided community training on legal and ethics issues. I am confident that my experience and commitment to issues involving persons with disabilities will enhance the continuing and new issues that VOPA will take on in the near future.

VOPA has finalized, with the direction and approval of the Board, its new priorities/focus issues for the year beginning October 1, 2003. Watch VOPA's website (www.vopa.state.va.us) for their posting within the upcoming weeks.

I look forward to new challenges, positive and constructive relationships with Virginia's disability community, VOPA's Governing Board and its staff, and working toward protecting the rights of individuals with disabilities.

DANVILLE/PITTSYLVANIA COMMUNITY SERVICES BOARD DISMISSES ITS OWN LAWSUIT VOPA TO ISSUE REPORT FINDING NEGLECT

Danville/Pittsylvania Community Services (DPCS) has asked the Circuit Court for the City of Danville to dismiss the lawsuit that it filed seeking to prevent the Virginia Office for Protection and Advocacy (VOPA) from issuing a report finding that DPCS committed severe and system wide neglect, resulting in a consumer being hospitalized. VOPA will issue

its report in the near future.

The lawsuit was filed after VOPA conducted an investigation of the way DPCS treated a consumer. VOPA found that DPCS neglected the consumer, resulting in the consumer's hospitalization. VOPA then forwarded a draft report to DPCS to give it an opportunity to respond and offered to publish DPCS's

response. Instead of responding to the report, DPCS first demanded that VOPA not publish its report and threatened, if VOPA did publish, to make negative statements about the VOPA staff person who conducted the investigation. When VOPA stated its intention to publish the report, DPCS filed its lawsuit. In the lawsuit,

Continued on page 6

MR. HOPE, THE SEIZURE RESPONSE DOG GOES TO SCHOOL

Kristin Cooper, Esq.

Christopher James is a child with a disability who is a new local celebrity in Tidewater. Chris is an adorable kindergarten student who has a seizure disorder and attends kindergarten at a Portsmouth, Virginia school. One side of Christopher's body is partially paralyzed. Last fall, little Chris made a new friend named Mr. Hope, a Golden Retriever, who is trained to detect seizures. Mr. Hope was trained for two years in the AIM High Program, which is sponsored by the military. The AIM High Program taught Mr. Hope how to detect seizures and how to alert parents and teachers when little Chris is having a seizure and needs medical attention. Little Chris learned how to take Mr. Hope with him to school. Initially, Mr. Hope was taken into the school up to the benches inside the school in order to acclimate the students and staff to his presence.

In the Spring, little Chris suffered more seizures and it was time for Mr. Hope to accompany Chris into the classroom. After resistance from the school, VOPA attorney Kristin Cooper intervened. The school agreed that Mr. Hope could enter the classroom and stay at Chris's side.

VOPA interpreter, Darlene Swindell, spoke to the kindergarten class about Mr. Hope, and how he would now be with Chris in school every day. She answered questions that the children had about Mr. Hope. Almost all of the children had dogs and cats, and liked animals. The children were excited that Mr. Hope would be attending school with them, and seemed to understand that little Chris needed Mr. Hope at his side. They had already seen Mr. Hope many times at the benches in-

side the school, and many of them had petted Mr. Hope.

Unfortunately, some of the parents of the children from the Portsmouth school did not like the fact that Mr. Hope was in the classroom. Eighty-six parents signed a petition saying that they did not want Mr. Hope in the school. There was no good reason as to why these parents did not want Mr. Hope in the school. The



only reasonable explanation is that these parents do not understand little Chris's disability and his medical need for the seizure response dog.

In an attempt to intimidate little Chris and his parents, an unknown party called WAVY TV10, and showed the station a copy of the petition. Andy Fox, a TV reporter from 10 On Your Side, visited the school, but the plan to keep Mr. Hope out of the school backfired. 10 On Your Side aired statements from the anti-service animal parents. One parent, who signed the petition, said that she was sick and tired of "having the ADA shoved down our throats." Another parent said that the dog had "mane." She probably meant

mange, but incorrectly pronounced the word. There was no truth to the claim, because Mr. Hope is groomed daily and taken to the vet on a regular basis.

10 On Your Side was not fooled by the anti-service animal parents and their preposterous claims. 10 On Your Side gave favorable coverage to little Chris and his mom from the beginning of their broadcasts about Mr. Hope. Andy Fox found it hard to believe that the parents would be so insensitive to a child with a disability. A VOPA attorney spoke with Mr. Fox and other members of the media on several occasions to clarify the law and explain Christopher's right to have Mr. Hope with him at school.

WAVY TV10 let the public know that it is a misdemeanor to interfere with a service animal, and broadcast the fact that it was little Chris's right to have his service animal with him in school because of the Americans with Disabilities Act. By broadcasting this story and information about the law, WAVY TV10 performed a wonderful service by helping TV viewers understand the law.

Soon after the WAVY TV10 broadcasts, over 100 parents and others signed a petition saying that Mr. Hope should be allowed to attend school with little Chris.

Possibly because of the controversy surrounding Mr. Hope, the school failed to include Mr. Hope as an accommodation in Chris's IEP. Attorney Kristin Cooper instructed the James family to leave the IEP

Continued on page 4

SIGNIFICANT CHANGES TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)

Hilary Malawer, Esq.

The House of Representatives has approved a bill that, if passed by the Senate, would significantly change the Individuals with Disabilities Education Act (IDEA). This bill, "Improving Education Results for Children with Disabilities Act," (HR 1350) was approved by the House of Representatives on April 30, 2003. In HR 1350, extensive changes to IDEA have been made in numerous areas, including discipline, due process, and the Individualized Education Plan (IEP) process.

In the area of discipline, the current version of IDEA provides a number of protections to special education students that have been eliminated in HR 1350. Currently, any child in special education who has been suspended over ten days has the right to a manifestation hearing. This is where a determination is made whether or not the suspension is due to the student's disability. HR 1350 does not require any procedure to determine whether or not a student's behavior is related to his or her disability. Without a manifestation determination, HR 1350 allows school personnel to unilaterally remove a child with a disability from his or her current placement for any violation of a school rule to an alternative educational placement. Currently, students with disabilities who have been suspended for over 10 days, are entitled to creation or review of a functional behavioral assessment and behavioral intervention plan, along with review of the current IEP. HR 1350 removes these entitlements.

HR 1350 establishes a one-year statute of limitations to institute a due process hearing. Current IDEA has no limitations period.

Therefore, the court looks to the most analogous state limitations period, which, in Virginia, is two years. Thus, the 4th Circuit has decided that parents currently have two years to bring a due process claim. A concern is that parents may not even learn of the problem or their rights until after the HR 1350 one-year time frame. After one year, parents and children with disabilities would not have significant recourse against violation of their rights.

Another concern is that HR 1350 permits the Governor of each state to determine the amount of reasonable attorney fees to be reimbursed to the parents. Some parents of children with disabilities and advocates worry that this will preclude adequate legal representation for special education children. In other words, numerous well-qualified attorneys may not take special education cases.

Currently, IDEA requires that an IEP be reviewed at least annually. HR 1350 gives parents the option for a three-year IEP. The IEP team will not have to meet and review the IEP more than once every three years. This raises concerns that some parents may not fully understand what it means to choose the three-year IEP option. With the three-year IEP, parents will likely receive less information about their child's progress and there will, therefore, be less accountability for the school system. Parents may miss out on critical information about their child's educational situation, not allowing them the opportunity to work with the school to fix the problem before it is too late.

Also, HR 1350 eliminates the requirement of benchmarks and

short-term objectives in the IEP by 2005-06 (except for those students taking alternative assessments). This is a critical change to IDEA. Benchmarks and short-term objectives allow and direct the team to focus on what is specifically needed for a special education student to reach his or her goals. They provide a way to measure, as the school year progresses, if appropriate advancement is being made toward annual goals, and provide accountability by the school system.

While there are other issues of importance, these are critical issues that are being revised by HR 1350. Please see www.bridges4kids.org/IDEA.html and www.tash.org/govaffairs/ideaaction_0503.htm for further information on HR 1350.

There is still time to call your senator and express your feelings regarding this bill. VOPA encourages you to attain more information about this bill and convey your position.



OLMSTEAD TASK FORCE READIES FINAL REPORT

Jonathan Martinis, Esq.

Virginia's Olmstead Task Force has approved its final report, in which it details its recommendations for implementation of the Supreme Court's decision in Olmstead v. L.C. In that decision, the Supreme Court interpreted the Americans with Disabilities Act to give people with disabilities the right to live in the "most integrated setting."

VOPA serves in a leadership capacity on the Task Force, acting as convener to two of the Task Force's seven issue teams, serving as liaison to a third and sitting on the Task Force's Steering Com-

mittee.

The Task Force had previously released its interim report and had received public comment on it. The Task Force's final report incorporates public comment and edits the recommendations made in the interim report.

The report is available on the Task Force's internet site at www.olmsteadva.com.

VOPA RELEASES SECLUSION AND RESTRAINT REPORT

Jonathan Martinis, Esq.

VOPA published its follow-up report on the use of seclusion and restraint at Western State Hospital.

The report found that Western State Hospital, although it has improved in its use of seclusion and restraint methods, continues to use seclusion and restraint inappropriately and unnecessarily. The report was submitted for comment to the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services. Commissioner Reinhard, to his credit, has pledged to "virtually eliminate" the use of seclusion and restraint through vigorous staff training and enforcement of facility policy and the Human Rights Regulations.



VOPA will continue to monitor the use of seclusion and restraint in Virginia's mental health facilities.

The report can be accessed at VOPA's website, www.vopa.state.va.us.

MR. HOPE con't. from page 2

meeting because it was unacceptable that Mr. Hope was not included as a reasonable accommodation. One school representative at the meeting admitted that she had been told not to include Mr. Hope as an accommodation by an attorney. After negotiations between Ms. Cooper and an Assistant Portsmouth City attorney, the school drafted a 504 plan which included Mr. Hope as an accommodation for Chris.

Little Chris, Mr. Hope, and the James family now have lots of fans when they go to the grocery store, parks, and other public places. People who saw the TV broadcasts come up to them to say "hi" and offer their support.

The fact that Mr. Hope attends school with little Chris under a 504 plan is a victory that has been won by VOPA for all children with disabilities who need service animals in school.

VOPA RESOLVES CASE WITH WESTMORELAND COUNTY

Jonathan Martinis, Esq.

VOPA has entered into a settlement agreement with Westmoreland County requiring the County to bring its administration facility and courthouse into full compliance with the Americans with Disabilities Act (ADA).

Upon an inspection of the facility, VOPA found that it

had inadequate accessible parking, inaccessible public pathways, inaccessible restrooms, and inaccessible

door hardware.

Under the settlement agreement, Westmoreland County is required to bring its parking, pathways, and door hardware into full compliance with the ADA by the end of May 2003, and bring its restrooms into compliance with the ADA by the end of October 2003.



DISCRIMINATION AT RICHMOND INTERNATIONAL RACEWAY

Kimberly Ware, Program Operations Coordinator

Two complaints were previously lodged by disabled individuals against Richmond International Raceway (RIR) for violation of civil rights for failure to provide adequate accessible parking under the ADA, the Virginians with Disabilities Act (VDA), and other statutory and common law. The allegations contended that RIR failed to provide accessible transportation from on-premises parking areas to and from the race track; that tractor trailers and recreational vehicles were allowed to be parked in accessible parking lots; there was a long delay following the race end to begin operating the trams to on-premises remote parking areas; adequate accessible parking was not available; and disabled patrons were not transported in golf carts which were marked with the RIR logo.

RIR officials invited VOPA staff to observe the accessible parking and accommodations provided to their disabled guests at a NASCAR race held on May 3, 2003. Staff accepted the invitation and, before viewing the complex, met with RIR staff and learned that the raceway hosts the largest sporting event in the State of Virginia, which attracts approximately 100,000 individuals, for two major racing events each year. RIR staff indicated that the influx of guests to and from the complex



compared to moving a city at one time.

During their observation of the complex and parking facilities, VOPA staff noted numerous parking attendants and law enforcement officers present to direct traffic and parking operations in the five local and two remote parking lots, all located within the complex. RIR staff advised that some changes to the accessible parking had been made since the last race (held in September 2002), to group

the accessible parking in two lots closer to the race track. The accessible parking lots were very clearly marked, and it was noted that parking attendants were checking for the appropriate handicapped license plate or tag on each vehicle that attempted to enter any of the accessible parking

lots. RIR has taken measures to ensure that it is in compliance with the ADA in its ratio of accessible parking spaces; in fact, RIR has designated 261 more additional spaces than is required.

In addition, there are guest services locations throughout the complex with staff to assist disabled guests, and accessible carts available (clearly marked) to transport guests needing assistance. RIR actually prototyped an accessible golf cart for disabled guests unable to transfer, which a cart manufacturer is now producing. The tram that is used to transport patrons to remote parking lots has been modified to accommodate wheelchairs.

In summary, VOPA staff were quite impressed with the improvements made by RIR to comply with all ADA requirements and actually going above and beyond in order to make its sporting events pleasant and fun for its disabled guests.



DPCS con't. from page 1

DPCS admitted that VOPA's report had found that DPCS neglected the consumer. DPCS also unlawfully disclosed the consumer's name and made numerous false or meritless statements about VOPA, its staff, and the investigation. VOPA responded by requesting that the United States District Court for the Western District of Virginia take jurisdiction over the case. VOPA then filed a Motion to Dismiss DPCS's lawsuit. The federal Dis-

trict Court, on August 27, 2003, declined to hear the case and remanded it back to the state Circuit Court for the City of Danville. Rather than attempt to support its case in the Court it originally chose, DPCS has now asked the Circuit Court to dismiss its case.

"It's sad that, in difficult budgetary times, DPCS would spend thousands of dollars on a meritless lawsuit when that money could have been better spent ensuring that its consumers do not suffer the same fate as the one involved in this case," stated

VOPA's Executive Director, V. Colleen Miller. "DPCS's actions in dismissing its case, without providing any evidence in support of its claims, shows that it knows now, and probably knew all along, that its case was unfounded and intended only to delay us from exposing its neglect. DPCS failed. We will publish the report as soon as possible."

SPREADING THE VOPA MESSAGE II **Dana Traynham, Esq. and Paul Buckley, Esq.**

VOPA attorneys Dana Traynham and Paul Buckley were again presenters at a continuing legal education course directed toward social workers, nurses, psychologists, counselors, certified case managers, rehabilitation counselors, risk managers, family therapists, health information managers, and others working with behavioral health clients.

The training, which took place at the Richmond Marriott West in Richmond on Friday, May 9, 2003, was attended by 125 mental health professionals from a vari-

ety of mental health settings including community services boards, state hospitals, general hospitals, and private clinics.

The conference, entitled, "Virginia Mental Health and the Law 2003," was a continuing education course approved by the Association of Social Work Boards, the American Psychological Association, the National Board for Certified Counselors, the American Nurses Credentialing Center Commission on Accreditation, the American Health Information Management Association, and the Commission for Case

Management Certification.

The portion of the day-long program presented by Dana and Paul was entitled, "Treatment Rights." The presentation, as the title implies, focused on an individual's legal rights with regard to mental health care including informed consent, the right to refuse treatment, psychotropic medication issues, treatment of minors without parental consent, and special considerations of criminal defendants. An overview of VOPA programs, with an emphasis on PAIMI was included.

YORK COUNTY PUBLIC SCHOOLS V. ANTHONY LEWIS **Kristin Cooper, Esq. and Pamela Johnson, Esq.**

York County filed due process against Anthony Lewis and his parents because the parents requested a sign language interpreter and were not satisfied with the transition services that Anthony is receiving through Grafton High School. Anthony has mental retardation and oral motor apraxia. He is able to speak verbally to a minimal extent, but is much more fluent in sign lan-

guage as an expressive mode of communication. Anthony is not deaf. The school division claims that it has provided all that the law requires and seeks to have its "proposed IEP" implemented through this hearing.

Four days of trial have been completed. VOPA presented fact witnesses, as well as the expert testimony of Patricia Trice from VCU in the area of sign language and the

testimony of Dr. Lawrence Leichtman, a Board Certified Clinical Geneticist and Board Certified Pediatrician who testified regarding Anthony's oral motor apraxia and the difficulties that this condition causes him in terms of speaking orally.

Prior to the trial itself, VOPA filed multiple motions, briefs, and exhibits.

"A CALL TO ACTION" CONFERENCE

A Call to Action is an advocacy conference geared toward parents, advocates, and attorneys who represent children. Educators are welcome. The conference is organized by the Virginia Coalition for Students with Disabilities.

The Virginia Coalition for Students with Disabilities began meeting in 1994 to address issues impacting students with disabilities. The Coalition is comprised of individuals and organizations that have expressed a desire to work together. Our mission is to

promote educational rights and opportunities for students with disabilities. (www.virginialac.org).

A Call to Action will be held on Saturday, October 18th, at the University of Richmond. Registration begins at 9:00 a.m., with the conference beginning at 9:30 a.m.

Group sessions will be held in the morning and at the end of the day. The afternoon will have three sessions running concurrently and repeated one time during the afternoon. Speakers are Pete and Pam Wright, Larry Searcy, Sylinda Gil-

christ, Anne Fischer, and Cheryl Ward.

Registration requires a \$15.00 fee for materials and lunch. A 48-hour cancellation notice is required for reimbursement of fee. Registration must be received by October 10 in order to guarantee lunch.

Make checks payable to the Endependence Center and mail to: A Call to Action, Endependence Center, 6320 N. Center Drive, Suite 100, Norfolk, VA 23502-4009.

ANNOUNCEMENT OF PUBLIC MEETINGS

The Department for the Blind and Vision Impaired (DBVI) has arranged for four public meetings around the state to solicit comments from the public regarding vocational rehabilitation and other agency services. Individuals requiring interpreters, assistive listening devices, or other special accommodations should contact James G. Taylor, Chief Deputy Commissioner, at 1-800-622-2155 (voice/TTY) at least two weeks prior to the meeting to request the preferred accommodation. The meeting locations, dates, and times follow:

NORFOLK

Christ & St. Lukes Church
567 West Olney Avenue
October 8, 2003
7:00 p.m. - 8:00 p.m.

RICHMOND

VA Rehabilitation Center f/t Blind
& Vision Impaired
401 Azalea Avenue
October 23, 2003
6:30 p.m. - 7:30 p.m.

ROANOKE

Lions Sight Foundation
501 Elm Avenue, SW
October 15, 2003
7:00 p.m. - 8:00 p.m.

FAIRFAX

Holiday Inn - Fair Oaks
11787 Lee Jackson Memorial
Highway
October 31, 2003
4:30 p.m. - 5:30 p.m.

Written comments may be submitted to James G. Taylor, Chief Deputy Commissioner, Department for the Blind and Vision Impaired, 397 Azalea Avenue, Richmond, VA 23227, and will be accepted if received prior to November 30, 2003. Comments may also be submitted by e-mailing Mr. Taylor at taylorjg@dbvi.state.va.us or by calling 804-371-3140 or toll free 1-800-622-2155.

VOPA WELCOMES FOUR NEW INTERNS

Jonathan Martinis, Esq.

Jennifer Dillow, a rising third-year law student, will work in the Richmond office. Jennifer has already received her first clients and settled a Title III accessibility case.

Dave Hall, Abbey Brown, and Missy Wycinsky, rising second-year law students, will be headquartered in the Richmond office, but will spend most of their time on "field work." Each of the three interns will be working on PAIR accessibility and PAIMI outreach issues.



202 N. Ninth St., 9th Floor
Richmond, VA 23219



VOPA

Virginia's Protection and
Advocacy System Serving
Persons with Disabilities

Commonwealth of Virginia
Virginia Office for Protection
and Advocacy

We're on the Web!
www.vopa.state.va.us

INSIDE THIS ISSUE

Message from the Executive Director	1
Danville/Pittsylvania Community Services Board Dismisses Its Own Lawsuit - VOPA to Issue Reporting Finding Neglect	1
Mr. Hope, the Seizure Response Dog Goes to School	2
Significant Changes to the Individuals with Disabilities Education Act	3
Olmstead Task Force Readies Final Report	4
VOPA Releases Seclusion and Restraint Report	4
VOPA Resolves Case with Westmoreland County	4
Discrimination at Richmond International Raceway	5
Spreading the VOPA Message II	6
<u>York County Public Schools v. Anthony Lewis</u>	6
"A Call to Action" Conference	7
Announcement of Public Meetings	7
VOPA Welcomes Five New Interns	7